IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

(1) RAJU @ RAJESH. V. THE STATE OF RAJASTHAN.

D. B. CRIMINAL APPEAL NO. 342/2003

(2) CHAIN RAM AND ANOTHER. V. THE STATE OF RAJASTHAN.

D. B. CRIMINAL APPEAL NO. 193/2003

Under Section 374, Cr.P.C., against the Judgment dated 03-02-2003, passed by Shri, Manoj Kumar Vyas, R.H.J.S.,the learned Additional Sessions Judge, (Fast Track), Udaipur in Sessions Case No.50/2001

DATE OF JUDGMENT :::: 06-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. Sandeep Mehta, for Appellants.
Mr. J.P.S.Choudhary, Public Prosecutor.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

Present appeals have been preferred by three accused to challenge the judgment of Additional Sessions Judge (Fast Track), Udaipur in Sessions Case No.50/2001 dated 3.2.2003. Since both the appeals have been filed against the common judgment dated 3.2.2003, thus both the appeals are disposed of by this common judgment.

First Information Report was lodged by Dhool Chand on 4.5.2000 at 10.30 p.m. in Police Station (Mahila Thana), Udaipur, Rajasthan. Complainant stated that his daughter Seema was married to accused Rajesh on 13.5.1994. After marriage, they remained peacefully for a period of one or one and half months. Accused Rajesh and his parents Gumani Bai and Chain Ram started harassing Seema for dowry. Seema started living with him. In the month of May, 1998, his daughter Seema was again being harassed, but with social interference, Seema started residing with her husband. At about 10.00 a.m., he received a telephone from FCI, reporting about the incident. Immediately, on receipt of message, he reached to the hospital, where his daughter was found fully burn but under treatment. He asked about the incident to his daughter, who then reported that her husband, mother-in-law and father-in-law poured kerosene on her, flamed it, for not satisfying their demand of

dowry. First Information Report was registered under Section 498-A of IPC, bearing Case No.10/2000. Investigation was conducted and thereupon challan was filed in the Court of Chief Judicial Magistrate, Udaipur, from where the case was committed to the Sessions Judge, Udaipur. The matter was initially transferred to the Special Court, SC/ST (Prevention of Atrocities Cases), Udaipur, from where it was later on transferred to the trial Court.

Trial Court framed charges against accused Rajesh under Sections 302, 340-B and 498-A of IPC, whereas Chain Ram and Ganeshi Bai were charged under Section 498-A of IPC. Accused denied charges and claimed trial.

Prosecution produced 16 witnesses and exhibited 51 documents. In defense, 9 witnesses were produced and seven documents were exhibited. Statements of the accused were recorded under Section 313 of Cr.P.C.

Trial Court convicted accused Rajesh under Sections 302 and 498-A of IPC and sentenced him life imprisonment and penalty of Rs.5,000/-, in default to serve rigorous imprisonment for six months and 3 years' rigorous imprisonment and Rs.500/- penalty, in default of payment to serve 3 months' rigorous imprisonment respectively for two offences for which accused Rajesh was convicted. Accused Smt. Gumani Bai and accused Shri Chain Ram were convicted under Section 498-A and

sentenced for one year's simple imprisonment and penalty of Rs.5,000/- each, in default to serve three months' simple imprisonment. Aggrieved by the said judgment, these two appeals have been preferred.

Learned counsel for the accused mainly argued that dying declaration of deceased Seema (Ex.P-7) has wrongly been considered by the trial Court. It was urged that deceased Seema was not in a position to make statement. Thus, before recording her statement, Magistrate was required to record his satisfaction. It was further submitted that at least satisfaction of the Doctor was required to be recorded, so that dying declaration may become reliable. According to the learned counsel for the appellants, even statement of PW 1 Dhool Chand shows that deceased Seema was not in a position to make her statement and in cross-examination, he had admitted that dying declaration was not recorded by the Magistrate in his presence. Referring cross-examination of PW 2 Radha Bai, it was canvassed that even as per the prosecution witness, deceased Seema was time and again becoming unconscious, therefore, it was not possible to record her statement. It was thus urged that trial Court committed an illegality in relying on dying declaration.

The learned Public Prosecutor argued that Ex.P-7 cannot be disbelieved as dying declaration was recorded by the Magistrate after taking satisfaction of the Doctor. It was submitted that on

the receipt of information for recording dying declaration through Ex.P-6, Doctor visited hospital at 2.00 p.m., but deceased Seema was not in a position to give her statement. Doctor again visited hospital at 6.35 p.m. and recorded statement of deceased as she was in a position to give her statement. Our attention was drawn to Ex.D-4, wherein it was firstly noted that at 12.30 p.m., the deceased was in a condition to give statement, but at 2.00 p.m., she was not in a condition to give her statement. At 6.40 p.m., patient was having condition to give her statement. Ratish Kumar Garg, Judicial Magistrate, was produced as witness and his statement was recorded as PW 8. The said witness stated that when he went to hospital at 2.00 p.m., deceased was not in a position to give her statement, therefore, he again visited hospital at 6.35 p.m. and when Doctor certified that the deceased is in a position to give her statement. It took nearly 20 minutes to record her statement. In the cross-examination, nothing was asked which can show any personal interest of the Judicial Magistrate. The learned Public Prosecutor thus, submitted that the learned trial Court rightly considered dying declaration and, therefore, the judgment of the learned trial Court calls for no interference.

We have considered rival submissions of the parties and carefully gone through the record. Dying declaration (Ex.P-7) was recorded by the Judicial Magistrate, Udaipur city his

pursuant to the intimation by Ex.P-6. Statement of learned Judicial Magistrate was recorded as PW 8 who then deposed that after having satisfaction of the Doctor, statements of deceased Seema were recorded. In that regard, we have gone through document (Ex.D-4) which clearly shows that there is endorsement of satisfaction of Doctor regarding condition of deceased Seema and at 6.40 p.m., it was certified that she can give her statement. The trial Court has carefully considered this aspect of the matter and after referring to the material available on record, drawn its conclusions. We are convinced with the conclusions drawn by the learned trial Court which call for no interference as the same are based on material available on record. We are not convinced with the argument of the learned counsel for the appellants that dying declaration is not reliable. The argument that there exists no satisfaction of the Magistrate or the Doctor to certify position of deceased Seema to make a statement. On perusal of Ex.D-4, it becomes clear that deceased's condition is being certified by Doctor and she was found to be in a position to give her statement at the time when the dying declaration recorded. We have also gone through the statement of PW 1 Dhool Chand. In the cross-examination, stated that his daughter at time found to be conscious and at time unconscious. He further stated that dying declaration was not recorded in his presence. We have considered this aspect of

the matter also. The statement of PW 1 does not suggest that deceased Seema remained unconscious throughout, rather it has clearly been stated that she remained conscious at times and this fact is corroborated from Ex.D-4, therefore, at the time when the dying declaration was taken, deceased Seema was conscious and was in position to give statement and the same was certified by the Doctor. It is not necessary that dying declaration should be recorded in the presence of father. Therefore, the statement of PW 1 cannot construe to mean that dying declaration was not at all recorded. What has been stated by the said witness is only that dying declaration was not recorded in his presence. Thus, it can otherwise mean that dying declaration was recorded in absence of deceased's father. But for that reason itself, dying declaration cannot be discarded.

The learned trial Court has convicted all the three accused for the offence under Section 498-A and accused Rajesh was further being convicted and sentenced under Section 302 of IPC. The conviction of the accused is based on material available on record and mainly based on dying declaration, thus there exists no ground to interfere in the order of the trial Court, whereby three accused have been convicted under Section 498-A and accused Rajesh was further being convicted under Section 302 of IPC.

We accordingly maintain the conviction of all the three

accused. However, accused Ganeshi Bai and accused Chain Ram are sentenced to the period of sentence already undergone by them. They are already on bail. Thus, their bail bonds are cancelled and sureties are ordered to be released.

We accordingly dismiss Appeal No.342/2003 and affirm the judgment of the trial Court, by which the accused Rajesh has been convicted and sentenced under Sections 302 and 498-A of IPC. His sentence is ordered to be maintained. Appeal No.193/2003 filed by Chain Ram and Ganeshi Bai is partly allowed. The two accused convicted under Section 498-A of IPC are sentenced to the period of sentence already undergone.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

scd.